IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 808 of 1987

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RUPSINGHBHAI PUNABHAI PATEL
Versus
STATE OF GUJARAT

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Appearance :
MR KJ SHETHNA for Appellant
MR AY KOGJE APP for Opponent

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

Date : 01&02/09/2006

ORAL JUDGMENT

1 This Appeal is preferred against the judgment and order delivered by the Special Judge, Ahmedabad, on 21st of

September, 1987, in Special Case No. 28 of 1986, convicting present appellant – accused for the offences punishable under Section 161 of the Indian Penal Code and also for the offence punishable under Section 5(1)(d) to read with Section 5(2) of the Prevention of Corruption Act, 1947. The present appellant for both the counts was sentenced to suffer rigorous imprisonment of one year and to pay fine of Rs. 100, in default, to suffer further rigorous imprisonment for one month. For both the counts, one sentence i.e. fine and imprisonment is awarded by the Special Judge to the appellant – accused.

2 The facts giving rise to the prosecution against the appellant can briefly stated as under :

One Mr. Maurya serving as P.I. ACB, Amreli, was summoned by Mr. Anilbhai Pandya, Deputy Director, ACB, Gujarat State on 18th of October, 1985 in connection with pending ACB cases. Other Police Inspectors were also called from the State by the Deputy Director. On that day, i.e. 18.10.1985, Deputy Director Mr. Pandya informed P.I. Mr. Maurya that certain police personnel and RTO employees used to illegally obtain money from the Drivers of the motor vehicles plying on highway road surrounding Ahmedabad City. In this respect, Mr. Maurya, was directed by Mr. Anilbhai Pandya , Deputy Director, to lay a decoy trap. It appears that in pursuance of this special direction, a team was formed under the

leadership of Mr. Maurya and he was assisted by H.H. Saiyed, PSI, H.H. Patel and other staff members of Anti Corruption Bureau Office of Palanpur including Police Head Constable Harshadbhai Pandya, Police Head Constable Navalsinh, a staff member of Anti Corruption Office of Ahmedabad. To lay a decoy trap, this team reached government guest house known as Pathik Ashram at Gandhinagar at 7.00 p.m. and occupied Room NO. 39 on 18.10.1985. At about 10.00 p.m. on the the same day, an attempt was made to search independent panchas to be utilized in the said decoy trap. Mr. Maurya found two persons, named as Ramubhai Jivabhai Patel and Sureshbhai Ratilal Shah, both residents of Kathwada, as panchas from bus stand of Gandhinagar and after ascertaining their willingness, they were taken to Pathik Ashram. The panchas were introduced to other members of raiding party. It was decided that they would first go towards Narol via Chhala and Naroda and inquire from the drivers of motor vehicles plying on road, and if any of them volunteered to accompany them for laying the decoy trap, then such driver would be utilized as punter. A preliminary panchnama was prepared in the presence of above two panchas at 11.30 p.m. all of them in one police jeep started from Gandinagar and ultimately reached at Bhavada Three Roads at about 1.30 a.m. on 19th of October, 1985, travelling through Chhala, Naroda, Odhav and Balasinor Road. They temporarily stayed near Bhavada Three Roads and waited for arrival for some vehicles. At about 1.45 a.m. one truck loaded with logs of wood

was found proceeding from Godhra to Ahmedabad. The said vehicle was stopped and driver was made to alight from the vehicle. It was found that the name of the driver was Siddiquebhai Ismailbhai, resident of Vejalpur, Godhra Taluka. He showed a pass issued from the Forest Department for transporting of logs of wood which were to be unloaded at Ahmedabad. The raiding party explained Siddiquebhai the purpose of their being at Bhavda Three Roads and asked Siddiquebhai whether he would be willing to be a decoy witness in the said trap. Driver Siddiquebhai expressed his willingness to assist and cooperate in the said decoy trap. Siddiquebhai thereafter along with panchas was taken inside jeep of ACB, and police Head Constable Navalsinh explained the utility of anthracene powder and ultra violet lamp. PI Mr. Maurya gave currency notes worth of Rs. 50/- to Police Head Constable Navalsinh consisting of one note of Rs. 20 denomination and three notes of Rs. 10 denomination. Numbers of such notes were noted in first part of panchnama. Thereafter from one brief case, a bottle of anthracene powder was taken out, and after placing currency notes on one plain paper with the help of cotton pod and paper, anthracene powder was smeared on all the currency notes of Rs. 50/-. Before that, those currency notes and hands of all of them were examined in light of torch, but no marks could be found, but after smearing anthracene powder on currency notes, in ultra violet lamp, hands of Police Head Constable Navalsinh and the currency notes of Rs. 50/- were found tainted with the marks of

anthracene powder. Panch No.2 Surendrabhai searched the person of Siddiquebhai and he found a pass and some currency notes from his shirt pocket, which were kept in his pant pocket, and his shirt pocket was kept empty. Police Head Constable Navalsinh thereafter at the instance of P.I. Maurya, complainant gave a fold to the muddamal currency notes of Rs. 50 and placed the same in the left side pocket of the shirt worn by Siddiquebhai, and the currency Note of Rs. 20 was first folded and other notes were kept in the fold of Rs. 20/-. Thereafter, Police Head Constable Navalsinh burnt that paper, cotton pod, piece of cloth, etc. and kept the bottle of anthracene powder in the brief case which they had carried was locked, and the key was handed over to panch No.2. Police Head Constable Navalsinh washed his hands by soap. Then the hands of all the members of the raiding party present there, were examined in ultra violent lamp, but all the hands were found clean. Driver – Siddiquebhai was instructed that he should keep panch No.1 Ramubhai along with him in the cabin of the truck and should proceed in the truck towards Ahmedabad, and if any police personnel or RTO employee attempts to stop his vehicle on the road, he should stop, and if he was asked to give the amount of bribe, after suitable reply, he should give the currency notes of Rs. 50/- placed in the pocket of his bush shirt, and after the said amount was accepted by would be accused, then, he should give a signal by lighting beedi, and except that, he should not touch those currency notes or the shirt pocket. Panch

No.1 Ramubhai was instructed to remain in company with the Driver Siddiquebhai in the cabin of the motor truck as well as thereafter and to hear and observe whatever might take place between would be accused and the Driver Siddiquebhai. The panch No.2 and other raiding party members were instructed to occupy the official jeep to follow the truck driven by Siddiquebhai and if truck stop then to come out of the jeep and arrange themselves to remain near the said motor truck of Siddiquebhai. Navalsinh was instructed to remain with them with ultra violet lamp. They were instructed that if a signal was made as aforesaid, raiding party members and panch No.2 to reach at the proper spot. Thus, Siddiquebhai, Driver of the motor truck, panch No.1 and cleaner of the truck occupied cabin of the truck while others sat in the official ACB car, and both the vehicles started towards Ahmedabad. When the said truck reached near Soni's Chawl Cross Roads on Odhav road in Ahmedabad, the present appellant was standing there in his police uniform, raised his hand and directed the said truck to stop. Siddiquebhai halted the said motor truck by taking it towards Naroda Road and got down along with panch No.1 from the truck. Both of them went near the side where the present appellant was standing. The appellant asked Driver Siddiquebhai that what was loaded in the said truck. Siddiquebhai replied that he had brought logs of wood from Godhra to be delivered at Ahmedabad. The accused – appellant further inquired from Siddiquebhai whether he was brining liquor, to which Driver

Siddiquebhai denied. The appellant then demanded pass from Siddiquebhai, which he handed over to the appellant and appellant kept the same in his hand. By that time, the jeep car which was following the truck had reached and was halted half a furlong away from the said truck and panch No.2 and other raiding party members got down from the jeep and scattered around the truck on the eastern side. During the conversation between the appellant and Driver Siddiquebhai, as aforesaid, PSI Patel, one Police Constable and panch No.2 of the raiding party reached near the driver Siddiquebhai panch No.1 and the appellant. The appellant asked referring to these three persons that who they were and whether they were the passengers. Driver Siddiquebhai replied to the appellant that they were the labourers of the truck. Thereafter, the appellant instructed Driver Siddiquebhai to give money for tea and water because that was the first transaction of the day, colloquially known as “bonnie” . The driver Siddiquebhai asked appellant as to what amount he was required to pay. The appellant – accused instructed to give Rs. 20/- and thereafter Driver Siddiquebhai took out with his right hand currency note of Rs. 20/- out of that muddamal currency notes of Rs. 50/- from the left side upper pocket of the shirt and gave the same to the appellant and he placed the remaining three notes each of Rs. 10/- in his shirt pocket. The appellant thereafter handed over the pass issued by the Forest Department and he examined the note given by Siddiquebhai in the street tube light. At that juncture, PSI Patel

and other Constable who were present there, caught hold of the hands of the accused and informed the appellant – accused that they were the members of Anti Corruption Bureau, and at that juncture, the appellant thrown the currency note of Rs. 20/- on the foot path. At that time, Mr. Maurya and other members of the raiding party reached at the spot and disclosed their identity and asked the name and address of the appellant, which he replied. At at that time. the present appellant was working as PSI, Odhav Police Station and was in uniform. Driver Siddiquebhai appraised Mr. Maurya about the demand and acceptance of the bribe amount of Rs. 20/- by the appellant. Panch No.1 Ramubhai Jivabhai, upon direction of Mr. Maurya picked up currency note of Rs. 20/- from the foot path with his right hand and thereafter ultra violet lamp experiment was carried out. Except panch No.1, appellant and Siddiquebhai, the hands of all were examined in ultra violet lamp but no anthracene powder marks was found, while hands of panch No.1, Siddiquebhai and the appellant, as described in the panchnama, were found tainted with anthracene powder. The uniform worn by the appellant was also examined in the rays of ultra violet lamp, but no marks were found on the uniform, while it was found that the upper side pocket of Siddiquebhai was emitting powder marks in the rays of ultra violet lamp, and inside the pocket, there were three remaining currency notes each of Rs. 10/-. Driver Siddquebhai took out those three notes from his pocket and gave those notes to Mr. Mauraya. This experiment was

done by PHC Navalsinh. Thereafter, the muddamal currency notes of Rs. 20/- which was picked up from the foot path was also examined in rays of ultra violet lamp and the note was found tainted with anthracene powder marks. The person of the appellant was searched as per direction by Panch No.2 and from his person, Rs. 11/- was found from his pocket and the same was returned to him. It was verified with the numbers of the notes of Rs. 20/- with the numbers written in the first part of panchnama and they were tallied. Thereafter, panchnama was prepared of this proceeding and completed at 4.10 a.m. On 19th of October, 1985. The accused – appellant was kept at Odhav Police Station and Driver Siddiquebhai was allowed to go along with his truck and the panchas were also allowed to go. PI Maurya thereafter went to the office of Anti Corruption Head Office and filed a complaint which was registered as First Information Report. One Mr. P.I. Patil was entrusted with the investigation of the said crime registered as ACB Crime No. 13 of 1985, but he did not carry out any investigation and thereafter one P.I. T.V. Yadav, who was then attached to ACB Head Quarters at Ahmedabad was directed to investigate the case by the Director and he recorded the statements of the raiding party members and complainant and panchas. Necessary procedure was carried out for obtaining sanction to prosecute the appellant from the disciplinary authority i.e. Commissioner of Police, Ahmedabad City and Additional Commissioner of Police, Ahmedabad City, accorded sanction first on 21st of April, 1986 but since the error

had crept in that sanction, a revised sanction was accorded by the disciplinary authority on 15th of May, 1986. PI Mr. Yadav arrested the accused appellant and submitted a charge sheet against him.

3 A charge for the offences punishable under Sections 5(1)(d) to read with Section 5(2) of the Prevention of Anti Corruption Act, 1947 along with Section 161 of the IPC was framed against the appellant vide Exhibit – 4 on 1st of January, 1987, to which the accused pleaded not guilty and hence the prosecution examined as many as 8 witnesses to prove its case. Prosecution has also placed on record, documentary evidence like First Information Report, panchnama Exhibit – 13, copies of the log book of mobile van of Odhav Police Station at Exhibits 30 and 31, Pass issued by the Forest Department at Exh. 18, Octroi Receipt for the amount paid by Siddiquebhai at Naroada Octroi Post vide Exhibit 19 and various correspondence exchanged between Director of ACB Office and Commissioner of City of Ahmedabad about sanction by various letters. The sanction which is relied upon by the prosecution as accorded by the then Additional Commissioner of Police, is placed at Exhibit – 40 which is dated 15th of May, 1986. Earlier sanction accorded by Additional Commissioner is produced on the record at the instance of appellant at Exhibit-53.

4 After the evidence was over, a statement of the appellant was recorded under Section 313 of the Code of Criminal

Procedure, wherein he denied to have committed any offence. Certain facts like he was serving as PI at the relevant time was admitted and claimed ignorance about whether the Additional Commissioner of Police was the appointing and removing authority. It appears that, he has submitted his written statement at Exhibit – 65 wherein he submitted that he had been falsely implicated in the trap case. He submitted that complainant Mr. Maurya and other two officers i.e. Mr.Saiyed and Mr. Yadav, only to please their superiors had concocted the facts of the above trap. It was submitted by him that the panchas were not independent and were known to PI Mr. Maurya, who was serving as Police Sub-Inspector from 1973-77 in the District of Gandhinagar and Kathwad village from where panchas belonged was situated in the Gandhinagar District. It was submitted that PSI Yadav had served in Panchmahal and was known to Driver Siddiquebhai and he was also selected to frame him. It is submitted that he belonged to very poor family and was a member of Scheduled Tribe of District Panchmahal. It was submitted that only Rs. 11/- were found as per the prosecution case from his pocket at the time of the search of his person, denoting his poor financial position. Though in terms and from the suggestions made, it appears that appellant admitted the fact that he was standing near Soni Chawl Four Roads on Odhav Road in Ahmedabad in his police uniform dress and stopped the truck driven by Siddiquebhai. He also admitted the fact that Driver Siddiquebhai got down from the truck and came near him,

but he denied the fact that panch No.1 or anybody had accompanied Siddiquebhai. He also admitted that he had asked about the goods loaded in the truck, to which Siddiquebhai had replied. He also admitted that he had demanded pass from Driver Siddiquebhai, but had denied the remaining prosecution case and incident of trap. This being the defence of the appellant during trial, thereafter learned Trial Judge heard both the learned counsels in great detail and after hearing them and appreciating the evidence on record, came to the conclusion that the prosecution proved beyond reasonable doubt that the appellant was a public servant, while serving as PSI of Odhav Police Station, in Ahmedabad City, on the day of the incident, i.e. on 19th of October, 1985 in the early morning at 3.15 hours demanded an amount of Rs. 20/- as bribe from Siddiquebhai under the pretext of entry fee and by inquiring that whether Siddiquebhai was bringing illegal liquor and thereafter accepted the said amount of bribe during discharge of his official duty and by corrupt or illegal means and abusing his position as public servant obtained for himself pecuniary advantage. The learned Trial Judge came to the conclusion that the accused was guilty for the offence punishable under Section 161 of the Indian Penal Code and for the offence punishable under Section 5(1)(d) to read with Section 5(2) of the Prevention of Corruption Act, 1947. After hearing the accused on the quantum of sentence, the above said judgment and order came to be delivered which is impugned in this Appeal.

5 The evidence of witnesses as recorded by the Trial Court has been in detail mentioned by the Trial Judge in his judgment and, therefore, it is not necessary to reproduce the same. In short, it may be stated that PW-1 Mr. S.V. Maurya - complainant Exh. 12 deposed about the fact that he was directed by Deputy Director to arrange a trap and, therefore, he found panchas and arranged a decoy trap. After first part of panchnama was over, they travelled around Ahmedabad and found Siddiquebhai near village Bhavada. Siddiquebhai since was willing to cooperate and assist, he was selected as a decoy witness and trap was arranged. He has been cross-examined in detail. Decoy witness Siddiquebhai Ismailbhai is examined at Exh. 17 wherein he deposed that he was Driver of his employer and was transporting logs of wood from Godhra to Ahmedabad. Near Bhavada Three Roads, he met with the ACB Party and expressed his willingness to be a decoy witness. He deposed about the experiments of anthracene powder in ultra violet lamp carried on in the jeep car near Bhavada Three Roads. He deposed that thereafter when they reached near Soni Chawl, appellant halted the truck and as per his deposition, the appellant inquired about the luggage and took the forest pass and inquired about whether Siddiquebhai was transporting illegal liquor. He denied. He further deposed that thereafter the appellant demanded Rs. 20/- for tea and water (this being sundry amount, it is so labelled in prosecution case.) The witness deposed that therefore

he gave the tainted note to the appellant and appellant was caught red handed. PSI Patel, Panch No.2 and Panch No.1 were present when bribe was demanded and accepted by the appellant and thereafter complainant was also reached at the spot. Anthracene powder was found on the hands of the appellant as well as on currency note which he had thrown on foot path which was picked up by panch No.1 as per the direction of Mr. Maurya. Second part of panchnama was drawn there. He has been cross-examined in detail. PW-3 Rameshbhai Jivabhai Patel, being panch No.1 is examined at Exh-20 and he stated that on 18th of October, 1985, he had been to Gandhinagar to inquire about the health of his friend and was returning to his village Kathwad and was standing at Gandhinagar Bus Stand stand along with Panch No.2 Surendrabhai, he was asked by Mr. Maurya to become panch in decoy trap. He had shown his willingness and he deposed about the first part of panchnama. He also on factual aspect, supports the deposition of Driver Siddiquebhai – PW-2. He was in detail cross-examined by the defence. PW-4 Bhikabhai Ramjibhai Patel, PSI, was examined for the purpose of producing log books Exhibits 30 and 31, by which the prosecution proposed to prove that at the relevant juncture, the appellant was not in-charge of mobile van of Odhav Police Station. PW-5 Nevantram Gidhumal Asuvani being First Grade Head Constable of the Office of Commissioner of Ahmedabad City is examined and he has stated that his office had received letters from Director, ACB, for according sanction and

concerned Police Officer had placed all original papers of investigation along with the draft to the Additional Commissioner, who had accorded the sanction. PW-6 Tailsardarsinh Vidyaram Yadav, Exh-44 is Investigating Officer and he stated that he took over the investigation from PI Patil and investigated the case, obtained sanction and charge sheeted the accused. He has been cross-examined in detail. PW-7 Venkatachalan Kannu Pillai is examined at Exhibit–49 and was working as Additional Commissioner of Police from November 1985 to August 1986 in the city of Ahmedabad and he deposed that as an Additional Commissioner of Police he received original papers of Ahmedabad ACB Crime Register No. 13/85 on 9th of April, 1986. Original papers were perused by him and he first accorded sanction at Exh. 53 on 21st of April, 1986. He deposed that thereafter again Office of the Director of ACB vide letter dated 7th of May, 1986 requested him that some wordings were missing from the sanction accorded on 21st of April, 1986. Therefore, he again perused original papers and accorded sanction on 15th of May, 1986 which he produced at Exhibit - 40.

6 PW-8 Mayur Kesarisinh Solanki is examined at Exhibit-63 and he stated that he was working in the office of Director of ACB at relevant time and to insert wordings to the effect that the appellant demanded the amount of bribe, the sanction order as forwarded by the Office of the Commissioner of Police, was again

forwarded to the office of Commissioner of Police along with forwarding letter. He further stated that original case papers were also forwarded to the office of the City Police Commissioner. He has also been in detail cross examined by the defence.

7 Learned Senior Counsel Mr. K.J. Shethna for the appellant raised various contentions. He submitted that panchnama ought to have been prepared in three parts, first part at Pathik Ashram, second part at Bhavada Three Roads and third part near Soni Chawl, instead, the panchnama is prepared in two parts and second part is written at Soni Chawl even though PW-1 Maurya in his deposition stated that the second part of panchnama was prepared from 14.00 a.m. to 2.30 a.m. at Bhavada Three Roads which creates doubt as perusing the original panchnama at Exh-13, this situation does not emerge. Learned Counsel submitted about the location where the incident of demanding and accepting bribe alleged to have taken place. It is stated that on probability it is required to be appreciated that the raiding party was travelling in official jeep which was parked only half a furlong behind the truck, it would be improbable that the appellant accused being responsible Police Sub-Inspector would even dare to demand bribe and accept the same having seen the official vehicle parking behind the truck at the distance of half furlong, which would have naturally seen by the appellant. It was contended that when the panchas and police constable reached near the accused from

behind the truck, on a question from appellant, it is stated that Driver Siddiquebhai labelled them as labourers. It is submitted that on touchstone of probability it may be appreciated that all these three persons reaching at the spot were not descending from the truck so as to accept the explanation of labelling them as labourers. It is submitted and contended that these are infirmities in the prosecution case. It is further stated that curiously complainant PW-1 Maurya was concealing himself on eastern side of the truck and he heard the conversation took place between the appellant and Driver Siddiquebhai and he deposed about the conversation in his deposition to prove panchnama which is the duty of the panch, and he conveniently omitted to say the actual conversation took place between the appellant and PW-1 about passing of amount. About selection of panchas, it has been vehemently urged that, however, to see that the trap results in success, PW-1 Mr. Maurya selected panchas, to whom he knew. Attention was drawn to the deposition of PW-1, page 8 and para-13 wherein it has been admitted that the panchas were from village Katwada where PW-1 admittedly had passed his tenure of service as PSI. It is submitted vehemently that in anti corruption cases, confidence in prosecution case could be inspired through the medium of independent panchas, and if panchas are not independent and are found to have been selected that very fact destroys the case of prosecution. It is submitted that it is within the knowledge of everybody that the circular is issued to the effect

that in laying trap in bribe cases, government employees should be taken as panchas. Drawing the attention of this court towards panchnama, it was stated and contended that it is the the prosecution case that in both hands of the appellant, there was anthracene powder marks, while the prosecution case itself discloses that the appellant accepted note by one hand and he examined the said currency notes by one hand and how then both hands of the appellant came to be tainted by anthracene powder and this explanation is not forthcoming from prosecution evidence. It is contended that it must be noted that where the incident took place, Odhav Police Station is situated nearby and within the vicinity. This is apparent from the averments made in the panchnama. It is submitted that it is not believable that near the Police Station where so many police personnel would be present, the appellant would dare to demand bribe as per the prosecution case. It is further submitted that in the evidence of PW-2 Siddiquebhai, in para-6 of his deposition, it clearly appears that he changed the sequence of the events. It is contended that PW-2 stated that after conversation or during conversation, PSI Patel, Panch No.2 and Head Constable Vaghaji approached them and thereafter the appellant asked about them who they were. While prosecution case is that the conversation took place after PSI Patel, Panch No.2 and Head Constable Vaghaji reached at the spot. It is submitted that this is material contradiction which creates doubt in the credibility of the prosecution case. It is submitted that it is

clear that in panchnama, Punter i.e. Siddiquebhai Ismailbhai was strictly instructed to light a beedi if the amount was accepted as bribe, but through the evidence, nowhere it is disclosed that this instruction was followed and no explanation is also coming forward as to why this instruction could not be followed. It is submitted that Exh-19 is a receipt of octroi paid by Driver - Siddiquebhai. When Exh-19 is seen, it is clear that from Soni Chawl to Octroi Post of Narol is hardly at the distance of 10 km. It is submitted that second part of panchnama was completed at 4.10 a.m. and Driver Siddiquebhai was allowed to go and how then he reached only at 5.30 a.m. at Octroi Post. Attention of this Court was also drawn to deposition in para-12 of Siddiquebhai wherein he stated that he reached at 4.30 a.m. at Asarva Railway Yard. It is also contended that these are the material loopholes in the prosecution case casting doubt as to the discredibility of the witnesses. It is submitted that in deposition, Panch No.1 has stated that, before they approached Driver Siddiquebhai, they roamed on Highway around Ahmedabad and many vehicles must have passed through, but none of them were selected, but only Siddiquebhai was selected. The only reason for selecting Siddiquebhai appears to be the acquaintance between PI Maurya and PW-2 as Mr. Maurya was working in the past in Kalol Taluka. Therefore, evidence of the driver and selected panchas must be carefully scrutinized and on doing so, it appears that both of them are not reliable witnesses. It is submitted that when explanation of panch No. 1

i.e. PW-3 is seen about his being at Gandhinagar bus stand, it appears that panch No.1 purposefully went to Gandhinagar and that fact is intentionally concealed by the prosecution. It is submitted that panch No.1 stated that he was working in a mill at Ahmedabad, from there he went to Kathwad and from Kathwad he came to Ahmedabad and from Ahmedabad he went to Gandhinagar. It is not explained by them why instead of coming straightaway to Ahmedabad, he went to Kathwad and from Kathwad he reached to Ahmedabad ST Bus stand. Some contradictions in the deposition of the panch also was brought to the notice of this Court. Those contradictions are in para-19 and onwards of his deposition. It is submitted that the natural procedure to lay decoy trap would be that, first of all, to identify punter and to call for panchas, but he is best known to the concerned PI, this procedure was employed vice versa and this conduct casts shadows on the prosecution case. Otherwise, after departuring from Gandhinagar at 11.30 they were not required to wait upto 2.15 a.m. for searching Punter because many vehicles were passing through and first one could have been selected for that. This leads to the inference that the raiding party was after selecting or securing a Punter, who would have acted as per the directions of P.I. There is contradiction in the evidence of two witnesses i.e. PW-2 and PW-3 as to when the note of Rs. 20/- was thrown by appellant on foot path. In paras 26, 27 and 28, contradictions are brought about in the evidence of panch No.1. In paras 21 to 24 in the deposition

of Panch No.1, it is in uncertain terms stated that the second part of panchnama was written at Soni Chawl but even then this second part was written in the jeep and this part in fact was, over near Bhavada Three Roads. It is submitted that, in this case, very material witness i.e. Cleaner of the truck, named as Nanjibhai Dhirabhai has not been examined by the prosecution. This is according to learned counsel for the appellant is very material lapse in the prosecution case. It is contended that the Investigating Officer Mr. Yadav admitted that he had recorded the statement of Nanjibhai Dhirabhai, cleaner of the truck but he was not cited as witness in charge sheet. Learned counsel submitted that adverse inference in this respect must be drawn against the prosecution case as the statement of Nanjibhai Dhirabhai would be against the prosecution and, therefore, he might not have been examined by the prosecution. Relying upon a decision of the Apex Court in the matter of GULAM MAHMOOD A MALEK VS. THE STATE OF GUJARAT, as reported in AIR 1980 SC 1158, it was contended that in appreciation of evidence for demand and acceptance of bribe, the background of the whole scenario must be taken into consideration. It is submitted that the cleaner was all throughout accompanied Driver Siddiquebhai till the end and witnessed and participated in the whole procedure as he occupied the cabin of the truck along with panch No.1. He could be said to be an independent witness but conveniently the prosecution failed to examine him as such. In the case of Gulam Mahmood A Malek

(supra) the allegation was against a Bench Clerk of a court for the demand of bribe and acceptance of the same. The demand of bribe was made in a court hall, but money was recovered from another room after about twenty minutes and no independent witness from the hall was examined, the Apex Court observed that the background of the case should not be lost sight of while appreciating the evidence in such cases. Learned counsel had relied upon the fact that cleaner being an independent witness, could not be examined by the prosecution as well as panch No.1 and complainant both could not be said to be independent witnesses. It was vehemently further contended that it is the prosecution case that the demand of bribe and the acceptance of same was in presence of police officer, as admittedly, as per the prosecution case, PSI Patel and one Head Constable were present at that juncture. Learned Counsel stressed upon the fact that a statement alleged to have been made by appellant as to demand of bribe is hit by Section 164 of the Code of Criminal Procedure as well by Sections 24 and 25 of the Indian Evidence Act and if the demand was made, it was made in the presence of the Police Officer and not admissible in evidence. It is contended that if this statement which is sought to be proved of the appellant, is excluded from the evidence as the same is not admissible, there is no evidence at all against the appellant for demand and acceptance of bribe. Heavy reliance is also placed on a decision of the Apex Court in the matter of RAO SHIV BAHADUR SINGH vs. STATE OF

VINDH-P, as reported in AIR 1954 SC 322, in paras 23 and 24 of the decision of the Apex Court, according to learned Counsel, the Supreme Court clearly observed that the statement of the accused before the Additional District Judge Mr. Shanti Lal Ahuja as to where the bribe amount was kept by the accused was not held admissible. It was submitted that in this case likewise the case of Rao Shiv Bahadur Singh (supra) investigation had started as panchnama was prepared and when in presence of police officer, alleged demand and acceptance of bribe has taken place, a statement of the appellant made in this respect in the presence of police officer would be hit by Section 162 of the Code of Criminal Procedure.

8 For examination of material witness, reliance is placed upon a decision of the Apex Court in the matter of HABEEN MOHAMMAD vs. STATE OF HYDERABAD, as reported in AIR 1954, SC 51, wherein the Apex Court observed that it is the bounden duty of the prosecution to examine a material witness, particularly when no allegation has been made that, if produced, he would not speak the truth. If this is not done, adverse inference should be drawn against the prosecution.

9 Learned Counsel for the appellant relied upon an unreported decision of this Court in Criminal Appeal No. 575 of 1993, pronounced on 18.12.2004 (Coram: Hon'ble Mr. Justice

Akshay H. Mehta) for independence of the panchas wherein this Court relying upon a decision of KANU AMBU VISH vs. STATE OF MAHARASHTRA, as reported in 1971 (1) SCC 503 and relying upon a decision of the Division Bench of this Court in the matter of NAVINCHANDRA DUNGARSHI DOSHI vs. THE STATE OF GUJARAT, allowed the Criminal Appeal No. 575 of 1993 and acquitted the appellant of the charges under the Prevention of Corruption Act. Lastly, the learned Counsel for the appellant submitted that there is contradictions between the deposition of PW1 and PW-3 panch No.1 in respect of who operated ultra violet lamp at Soni Chawl. It was submitted that in clear terms PW-1 Mr. Maurya stated that he operated ultra violet lamp while panch No.2 deposed that it was Police Constable Navalsingh who operated ultra violet lamp. It is submitted that this contradiction goes to the root of the prosecution case. Attention of this Court was drawn to the cross-examination of PW-1 Maurya wherein he stated that earlier he had arranged decoy trap, but they were a failure. Therefore, as per submission, Mr. Maurya was out and out to see that he succeeds in decoy trap. It is submitted that having considered all these above aspects together, it appears that, in getting the trap as success, the appellant was victimized and a false trap came to be arranged against him. Learned counsel thereafter dealing with the aspect of sanction, submitted that the sanction awarded which is placed at Exhibit-40 clearly reflects non-application of mind on the part of sanctioning authority. It is

submitted that PW-7 Mr. V.K. Pillai is though examined at Exhibit-49, in his deposition, in para-4, Mr. Pillai clearly deposed that one word i.e. “acceptance” was missing in the sanction letter dated 21st of April, 1986, ACB Director sought revised sanction, which is sent on 13th of May, 1986. Attention of this Court was drawn to Exhibit-53, which is sanction dated 21st of April, 1986, wherein word “acceptance” is not missing. It is therefore submitted that this is a clear non-application of mind on the part of sanctioning authority and, therefore, also the case of prosecution is required to be disbelieved. It is contended that in that event instead of remanding the case, the accused be acquitted. It is therefore submitted that for the above said reasons, Appeal be allowed.

10 As against that, learned APP Mr. A.Y. Kogje, submitted that the officers of the raiding party were acting in furtherance of noble object to curb corruption, which was rampant at the time on highway by police personnel and RTO employees. The object was to curb the corruption and not earn medals as has been submitted by the defence. In search of panchas and in search of panter, in these circumstances, time consumed by them is naturally excusable. It is submitted that in no way, the panchas could be labelled as not independent. Merely one of the panchas has some acquaintance with the officer of a raiding party, would not lose his independent character. Reliance is placed upon a decision of the Apex Court in the matter of STATE OF UP vs. DR. G.K. GHOSH,

1984 SC 1453. It is submitted that the whole circumstances right from beginning to end, points to the guilt of the appellant are totally inconsistence with the innocence of the accused. The totality of the evidence is required to be seen wherein all material part of the three material witnesses i.e. PW-1, PW-2 and PW-3 corroborate each other. Minor contradictions and inconsistencies here and there may not be looked into against the weighty evidence of these witnesses. It is submitted that there are no settled rules for preparing a panchnama. There is no merit in the contention that panchnama ought to have been prepared in three parts and instead it has been prepared in two parts and second part was prepared at Soni Chawl. Ultimately, it is submitted that the panchnama is document regarding events took place. It is submitted that cleaner Nagjibhai could never be said to be material witness to the prosecution for the simple reason that he never took part in any procedure and he was sitting in the cabin of the truck only. The dropping of a cleaner would not invite adverse inference against the prosecution case. It is submitted that though it is contended that the jeep was within the vicinity of the accused and in those circumstances the appellant would not have taken bribe, but there is no cross-examination of defence of any witness on the point that the appellant had seen the jeep or any of the raiding party members, was known to him. It is submitted that on this imaginary ground, the prosecution could not be thrown overboard. Learned APP has relied upon a decision of the Apex

Court in the matter of THE STATE OF BIHAR vs. BASAWAN SINGH, as reported in AIR 1958 SC 500, wherein in para 15, the Apex Court observed that there is no inflexible rule that the evidence of the witnesses of the raiding party must be discarded in the absence of independent corroboration. At the most, if any of the witnesses are in the category of an accomplice, then his evidence must be treated as the evidence of accomplice. If the witnesses are interested, their evidence must be tested in the same way as other interested evidence is tested by the application of diverse consideration, which may vary from case to case. In proper case, the court may look for independent corroboration. Learned APP relying upon these observations, submitted that it is not a rule of law that in each case of prosecution the evidence of members of raiding party must be corroborated by independent evidence, but if any corroboration is needed by way of rule of prudence, court may look for the said corroboration. In the present case, all the three witnesses i.e. PW-1, PW-2 and PW-3 are independent witnesses and there is no reason to disbelieve their evidence and this evidence can be acted upon even without corroboration. Learned APP Mr. Kogje in reply to sanction, submitted that the application of mind denotes deliberation on the part of sanctioning authority. Both the times, all the original papers were submitted to the disciplinary authority and in his disposition at Exhibit-49, Mr. Pillai in clear terms submitted that he had gone through the original papers and came to the conclusion

that there was prima facie case to sanction prosecution against the appellant. It is submitted by learned APP that therefore there was no question of non-application of mind as the sanctioning authority who clearly applied mind to all relevant papers and came to the conclusion. It is ultimately therefore submitted that the appeal deserves to be dismissed.

11 After hearing learned counsels for the parties in great details, as aforesaid, this Court has undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record with reference to broad and reasonable probabilities of the case as carefully scanned and the contentions raised by both the sides are taken into consideration.

02.09.2006

12 Now before re-appreciating the evidence on record, it is utmost necessary to deal with certain very important contentions of the learned counsel for the appellant. First and foremost amongst them is whether both the panchas were independent and whether punter was also an independent person. Reliance is placed upon a testimony of punter as well as PW-3 Ramubhai Jivabhai Patel. It is stated that in examination in cross in para-16, the panch admitted that he belongs to Kathwad village. This punch in his deposition has also admitted that panch No.2 i.e. Surendrabhai was known to Mr. Maurya. The contention is, therefore, picking up

of this punch by Mr. Maurya, loses the independent character of the panch. In this regard, it is also submitted that there was no reason for both the panchas to be at certain juncture at Gandhinagar bus stand. Like wise, Mr. Maurya and Mr. Yadav both during tenure of their service, served at Panchmahal District, Taluka, Kalol and, therefore, the punter is also selected.

13 This aspect in detail has been dealt with by the learned Trial Judge in his elaborate decision and this Court agrees with the reasoning. The circumstance which has been disclosed by the evidence recorded will have to be appreciated along with the above contentions. Only because one of the panch is previously known to the complainant Mr. Maurya, it could hardly be inferred that Mr. Maurya picked up punter and both the panchas, according to his special choice. It is amply disclosed that what the Deputy Director instructed Mr.Maurya to see that the corruption on the highway was at its peak and background of the matter can be visualized. PI Maurya was attending a meeting and summoned from Amreli to Ahmedabad and these instructions were given to him by Deputy Director. It must be the outcome of very vexatious problem to be dealt with by Anti Corruption Department. Otherwise, why the Deputy Director would instruct a police officer of outside Ahmedabad City to arrange a trap like the present one. What is disclosed by the evidence is the corruption around Ahmedabad Highway which again denotes that the Deputy

Director wanted somebody outside of Ahmedabad and not known in Ahmedabad. This would go to suggest that the ACB Department was not over enthusiastic to add filing of anti corruption cases but actuated in pursuance of a genuine problem with an objective to curb corruption of this kind. It must, therefore, be remembered that Mr. Maurya was not adding a feather in his cap, but was acting to achieve a noble objective to curb vexatious harassment to society at large. There is nothing on the record that Mr. Maurya earned medals by executing a raid in pursuance of the directions of the Deputy Director. The natural inference is, therefore, that allegations of picking up and purposefully selecting panchas and punter by Mr. Maurya, are totally baseless. If we appreciate the evidence on this respect, panch No.1 has very well explained that how he was present at relevant juncture at the bus stand, Gandhinagar. This aspect could not be shaken in cross-examination but in my humble view, disclosure this fact, reliability of PW-3 is strengthened. There was no necessity at all for panch No.1 PW-3 to say that the complainant Mr. Maurya had previous acquaintance with panch No.2. This fact is not concealed which is a guarantee of truth on the part of panchas. It must be noted that there has to be some element of selecting panchas. Logically, the appreciation of the situation would be that the selection at random and not categoric. The selection of panchas and punter in this case, obviously from the evidence, is at random and not categoric. To come to that conclusion that panchas are particularly selected,

very cogent and convincing circumstances should be on record. That circumstance is lacking. On the contrary, as aforesaid, what is disclosed by the evidence is the reasons for panchas being at the bus stand at Gandhinagar is disclosed. There is no reason to disbelieve this version. It may also be noted that, true it is that, so far as possible the panchas should be selected from the government offices, and in this case, private individuals are selected. This fact would not make any difference so far as the prosecution case is concerned because on wee hours of night, the trap was arranged to be laid when it would be, if not impossible, would be great difficult to find out government employees as panchas. Other wise also, circular to select government employees as panchas are guidelines and not the law. On appreciation, if the prosecution case is found trustworthy and the witnesses are found reliable, their evidence cannot be thrown over board for only reason that the panchas were not government servants. The same way, the punter is also cross-examined in detail and punter PW-2 Siddiquebhai has denied all allegations to have pre-acquaintance with any of the police officers. Here also, the element of selection would be there, but there is no categoric selection, but it is a random selection. Would it stand to reason to interfere and conclude that Mr. Maurya was visiting from Amreli to Ahmedabad, did know in advance that this Driver Siddiquebhai was to ply his truck from Godhra to Ahmedabad and he could be intercepted near Bhavada Three Roads, at least, there is no evidence on record even to imagine the above fact. If this is

so, the question of selecting punter also would not arise. It is also in this connection beneficial to refer a decision of the Apex Court cited by learned APP in the matter of STATE OF U.P. vs. ZAKAULLA, as reported in AIR 1998 SC 1474, in connection with independent witnesses. In para-10, the Apex Court observed that acquaintance of independent witness with police or fact that he helped police action would not by itself discredit evidence of said independent witness. The observation of the Apex Court in para-10 is as under :

> “10. The necessity for “independent witness” in cases involving police raid or police search is incorporated in the statute nor for the purpose of helping the indicted person to bypass the evidence of those panch witnesses who have had some acquaintance with the police or officers conducting the search and some time or the other. Acquaintance with the police by itself would not destroy a man's independent outlook. In a society where police involvement is a regular phenomenon many people would get acquainted with the police. But as long as they are not dependent on the police for their living or liberty or for any other matter, it cannot be said that those are not independent persons. If the police in order to carry out official duties, have sought the help of any other person he would not forfeit his independent character by giving help to police action.

> The requirement to have independent witness to corroborate the evidence of the police is to be viewed from a realistic angle. Every citizen of India must be presumed to be an independent person until it is proved that he was a dependent of the police or other officials for any purpose whatsoever. Hazari Lal v. Delhi Administration, (1980) 2 SCR 1033 : (AIR 1980 SC 873).

14 Learned Senior counsel for the appellant relied upon some decisions in this respect. Those decisions are on facts of those cases. A decision of this Court in Criminal Appeal No.575 of 1993, relying upon a decision of the Apex Court in the matter of KANU AMBU VISH vs. STATE OF MAHARASHTRA, as reported in 1971 (1) SCC 503 as well a decision of this Court in the matter of NAVINCHANDRA DUNGARSHI DOSHI vs. THE STATE OF GUJARAT, decided on 2nd of April, 1965 (Criminal Appeal No. 300 of 1964) the importance of independent medium in such cases was insisted upon. True that, any witness not independent and even panchas in raid case, inspires no confidence. It is well to remember that this strict ratio has been watered down and has been made lax by the Apex Court in various decisions, wherein on the facts of the case, the Apex Court came to the conclusion that even relying upon the evidence of the Investigating Officer and Police Officer, conviction can be based in corruption cases. For example, those

decisions are (i) in the matter of HAZARI LAL vs. THE STATE (DELHI ADMN.) as reported in AIR 1980 SC 873; (ii) in the matter of STATE OF UP vs. DR. G.K. GHOSH, as reported in AIR 1984 SC 1453; (iii) in the matter of STATE OF KERALA vs. M.M. MATHEW, as reported in AIR 1978 1571; (iv) in the matter of STATE OF KERALA vs. M.M. MATHEW, as reported in AIR 1979 SC 400 and (v) in the matter of NASIRMIYA HASANMIYA vs. STATE OF GUJARAT, as reported in 1993 (1) GLR 853. It always depends upon the facts and circumstances of the case whether the panchas are independent and whether the evidence of police officers to be believed or not. The law today as it stands is that even in absence of the evidence of complainant and panchas, there is no reason to discard the evidence of police officers if the same inspires confidence. Though in this case, the evidence of panchas as well as the evidence of punter inspire confidence and creditworthiness from the simplicity and naturalness of their depositions and in their manner of facing examination-in-cross. Nothing is brought about in cross-examination to discredit these witnesses and labelled them as liars for no reason. This court is, therefore, unable to accept the submission that the panchas and the decoy witness were not independent.

15 The second important submission which the learned Counsel made for the appellant is in respect of non-examination of cleaner of whom the statement came to be recorded by Mr. Yadav,

IO and still he was not examined and, therefore, adverse inference was required to be drawn against the prosecution case. Learned Counsel relied upon a decision of the Apex Court in this respect, in the matter of HABEEB MOHAMMAD vs. STATE OF HYDERABAD, as reported in AIR 1954 SC 51. True it is that, it is the bounden duty of the prosecution to examine a material witness to prove its case. At the same time, it must not be lost sight of that the cardinal rule of evidence as engrafted under Section 134 of the Evidence Act is that it is the quality of the evidence that matters and not the quantity. The question is, a witness who is not examined was a material witness so as to draw adverse inference against prosecution. To prove a fact and a relevant fact to the fact in issue, prosecution may examine the witnesses to its satisfaction and in appreciating the evidence if the same is found trustworthy and establishing a fact in issue or relevant fact, it could not be said that yet more witnesses material to prosecution were required to be examined. True when the witnesses already examined by the prosecution fall short to establish a fact and still the witnesses available and not examined by the prosecution, certainly adverse inference can be drawn against the prosecution. In the present case, prosecution examined three independent witnesses to prove the raid from beginning to end and the cleaner would have not made any difference in total and sum, except to burden the record. It must also be noted that the cleaner had not taken an active part in the raid and the cleaner cannot be termed as material witness.

Necessary it is now to refer to the observation of the Apex Court in the matter of POHLU vs. STATE OF HARYANA, as reported in (2005) 10 SCC 196. Though the trial in that case pertains to murder trial, but it is pertinent to note that when prosecution did not examine a witness named in the FIR, the Apex Court observed in para 10 as under :

> "10 It was then submitted that some of the material witnesses were not examined and in this connection, it was argued that two of the eye witnesses named in the FIR, namely, Chander and Sita Ram were not examined by the prosecution. Dharamvir, son of Sukhdei was also not examined by the prosecution though he was a material witness, being an injured eyewitness, having witnessed the assault took place in the house of Sukhdei, PW-2. It is true that it is not necessary for the prosecution to multiply witnesses, if it prefers to rely upon the evidence of the eyewitnesses examined by it, which it considers sufficient to prove the case of the prosecution. However, the intrinsic worth of testimony of the witnesses examined by the prosecution has to be assessed by the court. If their evidence appears to be truthful, reliable and acceptable, the mere fact that some other witnesses have not been examined, will not adversely affect the case of the

prosecution. We have, therefore, to examine the evidence of the two eyewitnesses, namely, PW-1 and PW-2, and to find their evidence is true, on the basis of which the conviction of the appellants can be sustained."

16 Likewise, in the matter of CHAUDHARI RAMJIBHAI NARASANGBHAI vs. STATE OF GUJARAT, as reported in (2004) 1 SCC 184, in paras 4 and 13, the Apex Court observed that when a witness is otherwise reliable and trustworthy, the fact sought to be proved by that witness need not be further proved through other witnesses. If the case of the defence was that the cleaner destroys the prosecution case, it was for the defence to examine him as a defence witness in the facts and circumstances of this case. Therefore, the submission that since cleaner is not examined, the adverse inference be drawn against the prosecution, cannot be accepted.

17 The third important submission which the learned Counsel made for the appellant was in respect of the statement of the accused as to demand and acceptance of bribe made in presence of police officer, cannot be admissible in the evidence. The learned Counsel for the appellant has placed heavy reliance upon a decision of the Apex Court in the matter of SHIV BHADUR SINGH vs. STATE OF VINDH-P., as reported in AIR 1954 SC 322,

the short facts of the case were a Minister of Vindhya Pradesh demanded bribe from the complainant at Delhi in a guest house, for which trap had been laid and unfortunately the District Magistrate was made a member of the raid party by concerned police officer. When trap was laid and when supplying the bribe money to the giver, the police officer, panch and the Additional District Magistrate Mr. Shanti Lal Ahuja reached in the room where the money of bribe had exchanged. The additional District Magistrate Mr. Ahuja and Police Officer Mr. Pandit Dhanraj asked the accused whether he had received any money as bribe, to which the accused replied in the negative. Thereafter both of them threatened to raid the room. Thereupon, the accused opened the drawer of a dressing table and brought out three bundles of currency notes alleged to have been given in bribe. In this connection, the Apex Court observed in para – 23 of the said decision that the statements made by the accused in the presence of the Additional District Magistrate and Police Officer was hit by Section 162 of the Code of Criminal Procedure and by Section 164 of the same Code. The submission of learned Counsel for the appellant was to discard the statement of the accused from the evidence in the present case and doing so, then there is no evidence of demand and acceptance. Evaluating and appreciating the contentions and the facts on record, it becomes clear that whatever the accused stated in respect of demand and acceptance was neither reply nor addressed to any police officer. He was undoubtedly communicating and

negotiating with PW-2 Siddiquebhai Ismailbhai. Mere presence of one PSI and one Constable would not bring the case within the mischief of Section 162 or 164 of the Code of Criminal Procedure. This is made amply clear in the decision cited by learned Counsel for the appellant i.e. in the very decision of Shiv Bahadur Singh vs. State of Vindh. Prad. (supra), wherein in para – 25 observed as under :

> " The evidence of these witnesses in regard to the statement made by the Appellant No.1 before them was also attacked on the ground that Shanti Lal Ahuja, the Additional District Magistrate's asking the Appellant No.1 to repeal the statement which he had earlier made before him to these witnesses was a mere camouflage. Shanti Lal Ahuja, the Additional District Magistrate knew very well that the statement made by the Appellant No.1 to him was not recorded under the provisions of Section 164 of the Criminal Procedure Code and was therefore inadmissible in evidence and he therefore resorted to these tactics of having the Appellant No.1 repeat the very same statement to these witnesses so as to avoid the bar of Section 164.
>
> Reliance was placed in this behalf on - `Hakam Khuda Yar v. Emperor, AIR 1940 Lah 129 (FB)(G),

where it was held that if on the facts of any case it was found that a statement made to a third person was in reality intended to be made to the police and was represented as having been made to a third person merely as a colourable pretence in order to avoid the provisions of Section 162 the Court would hold it excluded by the Section.

The same ratio it was submitted applied to the statements made to these two witnesses because they were a colourable pretence to avoid the provisions of Section 164 of the Criminal Procedure Code which had certainly not been complied with by Shanti Lal Ahuja, the Additional District Magistrate. It has however to be observed that every statement made to a person assisting the police during an investigation cannot be treated as a statement made to the police or to the Magistrate and as such excluded by Section 162 or Section 164 of the Criminal Procedure Code.

The question is one of fact and has got to be determined having regard to the circumstance of each case. On a scrutiny of the evidence of these two witnesses and the circumstances under which the statements came to be made by the Appellant No.1 to

them we are of the opinion that the Appellant No. 1 was asked by Shanti Lal Ahuja, the Additional District Magistrate to make the statements to these two witnesses not with a view to avoid the bar of Section 164 of the Criminal Procedure Code or by way of colourable pretence but by way of greater caution particularly having regard to the fact that the Appellant No.1 occupied the position of a Minister of Industries in the State of Vindhya Pradesh.

The statements made by the Appellant No.1 to these witnesses therefore did not suffer from this disability and were admissible in evidence.

In the present case, having regard to above observation of the Apex Court, statements made by the appellant to these witnesses therefore did not suffer from this disability and were admissible in evidence. Thus, it is clear that what transpires between the accused and PW-2 and PW-3 remained a conversation between third party and the accused and would not be hit by Section 162 or Section 164 of the Code of Criminal Procedure or Sections 24 and 25 of the Indian Evidence Act and this Court is unable to accept this submission.

18 Now, appreciating the evidence as a whole, since some

contradictions are brought to the notice of this Court, it must be observed that in appreciating the evidence on record, it must be borne in mind that due diligence must be exercised. The set up and the circumstances in which the crime is committed, the quality of evidence, nature and temperament of witnesses and probability in ordinary course of nature about the occurrence of the incident as might have been witnessed by the witnesses, must be duly weighed and exercise be undertaken to segregate chaff from the grain. There may be some contradictions in the version of the witnesses. All contradictions are not material to the prosecution case. The contradictions which lead to believe to an impossibility and improbability, may affect adversely to the prosecution case. In this exercise, it must be remembered that the memory of the human being has limitations. This is a creation of nature itself. We have rarest of rare species on human race having photogenic memory. Evidence of a witness must be appreciated keeping the human limitation in mind and reality of life and doubting thomas approach to the prosecution case must not be adopted. The trial to the accused must be a fair and trial to the prosecution also must be a fair trial. This is the cardinal principle of the criminal jurisprudence. Even though it is the duty of the prosecution to prove its case beyond reasonable doubt against the accused and the prosecution cannot take advantage of the weakness of the defence case.

19 When the evidence of these witnesses are considered and re-appreciated in light of above, it appears that the trial judge has rightly appreciated the stages of the prosecution case. The first stage is selecting of panchas and making arrangement of laying a trap; the second stage is leaving by raiding party for arranging a raid near Bhavada Three Roads upto Soni Chawl; the third stage is when Driver Siddiquebhai and Panch No.1 Ramubhai Jivabhai Patel went near the accused, and the last stage is whatever occurred thereafter till 4.10 a.m. The learned Trial Judge has appreciated this evidence and commented upon all these four stages. In none of the stages, on re-appreciating the evidence, any loophole was found as to discredit the witnesses. There was no reason for PI Maurya to arrange a false trap and make the accused scape goat. At least, no such reason has been found from the evidence. It is not that Mr. Maurya was out and out to see that somebody is made scape goat. The evidence in this respect is clinching and credit-worthy. I do agree with the reasons given by the trial judge in his decision for believing the evidence of PW-1, PW-2 and PW-3. This evidence which is otherwise trustworthy, is attempted to impeach only on the ground of probability and contradictions. The contention was that the panchnama was not prepared in three parts even though Mr. Maurya has stated that it was in three parts. It must be noted at this stage that what Mr. Maurya deposed in his deposition was in reply about two parts of the panchnama appears to be notional. There is no doubt that the

second part of panchnama was not written at Bhavada Three Roads. Now, the question is, for this reason, the evidence of witnesses and the punch No.1 should be disbelieved? Answer must be in the negative. This is so because the panchnama is nothing but contemporaneous record prepared about what took place at the relevant juncture. When panchnama is examined with reference to the evidence of panch witnesses as well as with reference to the evidence of PW-1 Maurya and PW-2, it is found that no contradiction going to the root of the prosecution case, could be brought about in the evidence of prosecution. The contradiction as to whom executed ultra violet lamp at the time of completion of raid, is not material because it is amply established through panchnama that it is police constable Navalsinh, who, as per the instruction of PW-1, executed those experiments. Only because PW-1 stated in his deposition that he did those experiments, would hardly make any difference in prosecution case as the fact is established that those experiments had been carried out and through the evidence of PW-2 Siddiquebhai and PW-3 Panch No.1 Ramubhai, undoubtedly, this fact has been established. In panchnama also, which is at Exhibit – 13, it is stated that those experiments were carried out by Head Constable Navalsingh. The contention can be viewed from the different angle that the panchnama at Exhibit-13, was the document prepared by PW-1 Maurya. If anything he stated in contradiction to what is stated in the panchnama, it was the duty of the prosecution to bring that

contradiction to the notice of PW-1, but the defence in cross-examination, did not draw the attention of PW-1 to panchnama at Exhibit – 13 as to who had executed the experiments of ultra violet lamp.

20 On account of lapse of memory and on account of genuine mistake on the part of PW-1, deposition of other witnesses cannot be jettisoned who have established this fact beyond any doubt. On improbabilities many contentions are raised, but the fact remains that it is established beyond reasonable doubt that after showing the pass, the accused demanded Rs. 20/- as bribe and that too being the first transaction, it is colloquially known as “bonnie”. The matter can be viewed from the angle of two sides of a coin. When it is submitted that there was no reason for the accused to demand bribe, at the same time, the second side must be seen that everything though was regular on the part of Siddiquebhai, the bribe was demanded under the pretext of entry fee. Realities of life must be considered along with the evidence adduced by the prosecution. For the reasons that since it was light at Soni Chawl when the raiding party was travelling in an official jeep, the accused – appellant would not have tempted to demand the bribe, the prosecution case cannot be thrown on overboard assuming that accused must have noticed the jeep. This is so because by cogent and convincing evidence, once it is established that the appellant demanded the bribe and accepted the same,

then it was the duty of the defence to show the probability that accused appellant had in fact seen the jeep. Otherwise, the fact remains that the appellant accused did demand the bribe and did not see the jeep which was at a half furlong away especially in the circumstances that raiding party members were senior Police Officers and were careful about the fact that the truck which was halted at the instance of Police officer because the appellant – accused was in uniform. The prosecution case is not affected on this ground.

21 The prosecution case is also not affected by the fact that Exhibit-19 octroi receipt shows the time of 5.30 a.m. It is on the record that the second part of panchnama was over at 4.10 a.m. Though in his deposition, PW-2 Siddiquebhai stated that he reached Asarwa at 4.30 a.m. The exact timings mathematically is not expected from witnesses. This exactness would on the contrary lead to artificial maneuver and would cast doubt in respect of this discrepancies and in respect of other discrepancies. It must be observed that the careful scanning must lead to a conclusion that such discrepancy affects totally to substratum of the prosecution case. What is required is to see that whether there is a ring of truth in whatever witnesses state before the court because the trial is nothing but a search for the truth. In this process, if boulders come, the court may take proper course of justice but minor discrepancies must not block the way of search for the truth.

There are bound to be some discrepancies between the narrations of the different witnesses when they speak on details, and such variations if not touching to the core of the prosecution case, may be appreciated, considering the realities of life and occurrence of the incidents in its natural course. It must be found out from the depositions of the witnesses reading the disposition as a whole and not in isolation that what is the general tenor of the evidence. Hyper technical approach to give more importance to discrepancies would give a birth to a situation where it would not be possible for the prosecution to prove any trial. The evidence of PW-1, PW-2 and PW-3 if examined as a whole, the general tenor of the evidence is amply disclosing the occurring of the incident in which the accused appellant demanded bribe under the pretext of entry fee. These observations are in relation with the contentions on behalf of the appellant as to certain contradictions and probabilities of the events which might have occurred. Equally true it is that as directed pre-arrangement lighting of beedi was not followed. This is so because PSI Patel, Police Constable Vaghela and panch No.2 reached where appellant – accused, panch No.1 and decoy witness Siddiquebhai were standing and occasion to signal had not arisen at all. This fact is also required to appreciate in totality of circumstances. Reaching all these three persons at the spot before signal, would not itself cause the prosecution case in rejection. The proper process is to examine the effect of this admitted fact. True it is that, there is no

explanation coming forward for reaching three persons before signalling, but the prosecution case is not affected thereby. This is so because the core of prosecution case about demand and acceptance of bribery stands established by independent evidence of PW-2 and PW-3. One cannot stretch the imagination without any probable cause that these independent witnesses helped police officers to lay a false trap against the accused – appellant and to rope in a police officer in such a serious case. Like wise there is nothing on the record to show that the police officers of the raiding party from different stations of the State, acting under directions of Deputy Director, had an axe to grind against the appellant or anybody else to rope him in a serious case by hook or crook. The contentions as to contradiction on behalf of the appellant as has raised, therefore, are required to be appreciated with the touchstone of credibility of those witnesses. In my humble view, the credibility of PW-1, PW-2 and PW-3 could not be shaken during trial. The veracity of the evidence of a witness can be judged from the manner he deposes before the Trial Court and by attending circumstances. A thorough scrutiny is undertaken as aforesaid to put this evidence on acid test of reliability and it is found that the evidence of PW-1, PW-2 and PW-3 passes that test beside some discrepancies in their evidence. There may be discrepancies in speaking about the sequence of the events but that itself would not render the prosecution evidence unreliable. Above all, though this court has undertaken re-appreciation of the evidence and examined

the credibility of the witness, but the trial court in such trials, is the best judge to assess credibility and veracity of a witness and the trial court for the reasons recorded in the decision, relied upon the evidence of these three witnesses. There is no reason for this court to differ with the view taken by the trial court. In the matter of ALAMGIR SANI vs. STATE OF ASAM, as reported (2002) 10 SCC 277, the Apex Court in this respect observed in Para-12 as under :

> "12 In support of his submissions, Mr. Jaspal Singh relied upon the cases reported in *Thulia Kali v. State of Tamil Nadu; Ram Kumar Pandey vs. State of M.P. And Balaka Singh v. State of Punjab.* There can be no dispute with the legal proposition laid down therein. The main question in all such cases is whether the testimony of witnesses can be believed or not. Ultimately all these principles deal with methods of testing the veracity of the witnesses. The trial court which had the benefit of watching the demeanour of the witnesses is the best judge in this behalf. More importantly, the above principles may cast a doubt on the veracity of the testimony of the father (PW-7). But the testimony of the father is corroborated by the testimony of Pws 5, 6, 10 and 11. Both the trial court and the High Court have believed the evidence of these witnesses."

22 The decisions which were cited by learned Counsel for the appellant in the matter of SITA RAM vs. THE STATE OF RAJSTHAN, as reported in AIR 1975 SC 1432 and in the matter of SURAJ MAL vs. THE STATE (DELHI ADMINISTRATION), as reported in AIR 1979 SC 1408, are the decisions on the fact of those cases and in criminal trial, facts of one case and conclusion arrived at from those facts, cannot be precedent for the other cases.

23 The last contention which is required to be dealt with is in respect of sanction accorded by the disciplinary authority, who has examined as PW-7. It was urged that in view of para-4 of the deposition of PW-7 Mr. Pillai, non-application of mind is apparent on the face of record. When we scanned the record, it appears that in first point of time, Director of ACB moved for sanction of the disciplinary authority and in the month of April 1986 investigation papers along with draft sanction and note prepared by reader of the disciplinary authority came to be placed before Mr. Pillai and this is disclosed through is evidence in para 2 of his deposition. When a draft was put up to the disciplinary authority in April, wording that the appellant accepted the amount of Rs. 20/- particularly the phrase “acceptance” was not there and, therefore, the note which is at Exhibit – 36 was amended and sanction order was re-typed including that the appellant – accused accepted the

bribe and was forwarded to the Director of ACB and that sanction is dated 21st of April, 1986 which is placed on record at Exhibit-53. However, Director of ACB again initiated action for the fresh sanction and communicated to the disciplinary authority that in Exhibit – 53, the word the appellant – accused demanded the bribe could not be typed and, therefore, fresh sanction was requested. The disciplinary authority, as per his deposition Exhibit – 49, again gone through the original papers and after inserting the phrase “the appellant accused demanded bribe”, a fresh sanction was accorded which is placed at Exhibit – 40, which is dated 15th of May, 1986. In this respect, the disciplinary authority deposed in his deposition in para – 4 as under :

> “4. As one word viz. `acceptance' was found missing from the sanction order dated 24.4.1986, another revised typed order of that sanction after – adding that word was prepared by Mr. Barot and it was put up before me on the very day i.e. On 13.5.1986. I again applied m y mind and after considering the papers, I approved it and signed it on 15.5.1986. It is the same shown to me which is produced at Exh.40. It bears my signature. It is the original sanction order. Then that original sanction order along with the copies and xerox copies of papers of investigation were sent back to the Director, ACB, on 15.5.1986 with a forwarding letter

signed by me. Its office copy is the same shown to me which is produced at Exh. 38. It also bears my signature."

Now, in fact, when fresh sanction in May 1986 was accorded, what was sought to be inserted in sanction was wording in respect of demand while in the sanction earlier accorded on 21st of April, 1986, word "acceptance" was already there. The contention therefore is that though the word "acceptance" was already there in the sanction accorded vide Exhibit – 53, disciplinary authority in para-4 observed that after inserting word "acceptance" he accorded sanction on 15.5.1986 vide Exhibit – 40. However, considering all attending circumstances, it appears that there is error on the part of sanctioning authority in deposing that in latter sanction, the word "acceptance" was inserted. In fact, in latter sanction on 13th of May, 1986, word "demand" was inserted, but this itself could not render the sanction invalid on the ground of non-application of mind. This is so because the requirement of application of mind is that, the order of sanction must ex facie disclose that the sanctioning authority had considered the evidence and other material placed before it and this fact is evident from the deposition of disciplinary authority vide Exhibit – 49. The disciplinary authority, therefore, applied proper mind while according sanction as he took into consideration all the necessary papers and all attending circumstances, but it appears that in para-

4 while deposing before the court, he did not apply his mind and committed mistake in saying that word “acceptance” was inserted in sanction at Exhibit-40. Though the disciplinary authority enjoying very high designated status in government machinery must be alert while deposing before the court. Though this alertness is lacking, but it cannot be converted in non-application of mind while according sanction. Unfortunately, this mistake could not be corrected by the deposing officer nor learned APP in-charge of prosecution, to clarify this aspect before the court. However, in any case, these circumstances would not render the sanction invalid on account of non-application of mind and, therefore, this Court is unable to accept this contention as well.

24 In view of above, so far as, the merits of the appeal is concerned, no substance is found in the Appeal.

25 Learned Counsel for the appellant then argued about the reduction of sentence. In this respect, learned Senior Counsel Mr. Shethna and learned APP are heard. It has been submitted by learned Senior Counsel that the incident has taken place on 19th of October, 1985 and since then much water has been flown as the time of more than two decades is lapsed. Learned Senior Counsel stated that mere passing of time may not be a ground for reduction of sentence. Learned Senior Counsel for the appellant stated that it may be borne in mind that the appellant – accused was working as

PSI at the relevant time. Considering those factors with the lapse of time, it is also to be considered that the amount of bribe which is involved in the case is very petty and to the extent of Rs. 20/- only. The appellant accused is today aged 56 years. He has lost of his service benefit long back. He has to maintain his family. It is submitted that the appellant – accused is coming from very poor and downtrodden strata of the society as the appellant accused belongs to Scheduled Tribe of Panchmahal District where the area is too backward to sustain human life and only with great difficulties. It was further submitted that the parents of the appellant accused have already been expired but very old grand parents are living, whose responsibility is upon the appellant – accused. He has only son who is married and is separate. Only agricultural land of about one and half acre, not much productive, is the only instrument of the bread of family and imprisonment for a long period of the appellant - accused would cast utter misfortune on the family as the earning from agricultural land would be nil. It was submitted that the period of sentence of imprisonment be reduced to considerable extent of already undergone.

26 Having heard learned Counsels about the quantum of punishment, it is made clear that having regard to the objectives of enacting the Prevention of Anti Corruption Act, long lapse of time, only is not the ground for mitigating the sentence because this has now become a common phenomenon but at the same time i.e.

Circumstances as pleaded by the learned Senior counsel must not lose sight of. This is a case of peculiar kind and of a particular facts. Under Section 5(2) of the Prevention of Anti Corruption Act, 1947 for adequate reasons, the Court is empowered to award lesser punishment than the minimum. The circumstances which the learned Senior Counsel pleaded are the circumstances, in my humble view, can be taken into consideration for reduction of sentence and also the object and the purpose of enactment of the Act must be kept in mind. Each such case stands on its own facts. The facts of this case cannot be made precedent for the other case. Even for the adequate grounds for reduction of sentence, in the matter of B.C. GOSWAMI vs. DELHI ADMINISTRATION, as reported in AIR 1973 SC 1457, the Apex Court in para – 10 referring to the objects of the Prevention of Corruption Act and referring to the particular circumstances of that case, came to the conclusion that the ends of justice would meet if the fine imposed was raised to Rs. 400/- from Rs. 200/- and the sentence of imprisonment was reduced to that already undergone from one and half years. Like wise, in other decision of the Apex Court in the matter of TAR SEM LAL vs. STATE OF HARAYANA, as reported in 1987 SC 806. The Apex Court while maintaining the conviction, reduced the sentence to already undergone by the accused. In the matter of VISHNU NAGNATH DESHMUKH vs. STATE OF MAHARASHTRA, as reported in 2001 Cri. L.J. 483, the sentence came to be reduced to the period of imprisonment already

undergone. In view of smallness of amount involved. This is observed in para-3 of the said decision. Like wise in the matter of T.M. JOSEPH vs. STATE OF KERALA, as reported in AIR 1992 SC 1922, sentence of one year was reduced by the Apex Court to 15 days rigorous imprisonment on each count and this is observed in para-4 of the decision.

26 Therefore, having regard to the peculiar facts and circumstances of this case, this court is inclined to accept the submission made by learned Counsel for the appellant to reduce the sentence while maintaining the conviction and maintaining the imposition of fine by the judgment impugned. It must be noted that for both the counts i.e. for the offence punishable under Section 161 of the Indian Penal Code and for the offence punishable under Section 5(1)(d) of the Prevention of Corruption Act, 1947, the appellant is convicted and sentenced jointly to suffer rigorous imprisonment of one year and to pay fine of Rs. 100/-. In humble view of this court, the ends of justice would meet if the sentence of imprisonment which is awarded to the petitioner to the extent of rigorous imprisonment for one year be reduced to rigorous imprisonment of 10 days.

27 In view of above, this Appeal is partly allowed. While maintaining the conviction awarded by the Trial Court to the appellant for the offences punishable under Section 161 of the

Indian Penal Code and for the offence under Section 5(1)(d) to read with Section 5(2) of the Prevention of the Corruption Act, 1947, the appellant is sentenced to undergo rigorous imprisonment of 10 days instead of rigorous imprisonment of one year as awarded by the Trial Court and the quantum of sentence of imprisonment is reduced to that extent. The amount of fine imposed by the Trial Court is not interfered with. The rest of the appeal of the appellant, except reduction of sentence of rigorous imprisonment, stands dismissed.

28 The appellant accused is on bail and his bail bonds stands cancelled. However, in the facts and circumstances of the case, the appellant is granted time to surrender before the Trial Court for serving of sentence upto 01st of November, 2006.

(J. R. VORA, J.)

pnnair